

CHAPTER 222

S.B. No. 1142

AN ACT

relating to the regulation of certain career counseling services; providing a civil penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

(1) "Career counseling service" means a person who, for compensation, provides a service designed to assist a client in the development or marketing of the client's career, including:

- (A) the identification of career options;
- (B) the assessment of the marketability or income potential of a proposed career;
- (C) recommendations relating to job search goals and interview techniques and strategy;
- (D) career advancement and negotiation techniques; and
- (E) similar career development advice or assistance.

(2) "Client" means an individual who contracts to use the services of a career counseling service.

(3) "Commissioner" means the commissioner of the Texas Department of Labor and Standards.

(4) "Department" means the Texas Department of Labor and Standards.

(5) "Owner" means a person who owns or operates a career counseling service.

(6) "Person" means an individual, association, corporation, or other legal entity.

SECTION 2. EXCEPTIONS. This Act does not apply to:

(1) a person regulated by Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes);

(2) a personnel service operated by the United States, this state, any political subdivision of this state, or any organization receiving appropriated funds from or under contract with those governmental entities;

(3) a professional counselor licensed under the Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes); or

(4) a nonprofit organization qualifying under Section 501 (c)(3) of the Internal Revenue Code of 1986, providing a service described in this Act as part of its charitable purposes.

SECTION 3. CERTIFICATE OF AUTHORITY. (a) A person may not own or operate a career counseling service in this state unless the person holds a certificate of authority issued under this Act. To obtain a certificate of authority, the owner must file a sworn application with the commissioner accompanied by the required application fee. The application must be in the form prescribed by the commissioner and must state:

- (1) the principal location of the counseling service;
- (2) the name and address of each owner; and
- (3) the assumed name, if any, under which the career counseling service is to operate.

(b) The application must also include a statement indicating that the owner has read and is familiar with the provisions of this Act. If the applicant is a corporation, the statement must be signed by each officer. If the applicant is an association or partnership, the statement must be signed by each associate or partner.

(c) Before a certificate of authority is issued, the owner must obtain and file with the department a bond in the amount of \$10,000, executed by a surety company authorized to do business in this state, payable to the state, and conditioned on the faithful performance of the owner's obligations under this Act. The owner must file a separate bond for each business location. The commissioner may not issue a certificate of authority until the

bond is filed. Instead of the bond, an owner may deposit for each business location \$10,000 in cash.

(d) The commissioner shall issue a certificate of authority to do business as a career counseling service to an applicant who meets the requirements of this section. The commissioner shall process a certificate application not later than the 15th day after the date on which the application is filed. The commissioner may adopt rules relating to the administration and enforcement of the certificate of authority program created under this Act.

(e) A certificate of authority is valid for one year from the date of issuance and may be renewed by filing a notice containing the information required under Subsection (a) of this section, accompanied by the renewal fee set by the commissioner. The owner shall display the certificate in a prominent place in the principal location of the career counseling service.

SECTION 4. ANNUAL FILING. Each career counseling service must file an annual financial statement with the department.

SECTION 5. CONSUMER INFORMATION; COMPLAINTS. (a) Each career counseling service must adopt a program for consumer complaint resolution. The service must respond to each complaint within 48 hours from its receipt in writing and must resolve the complaint not later than the 10th day after the date on which the complaint is received. If the complaint cannot be resolved by the service within that period, the service must refer the complaint to outside arbitration with a qualified arbitration organization recognized by the department and must resolve the complaint not later than the 30th day after the date on which the complaint is referred for arbitration. An arbitrator may recommend a refund on a pro-rata basis if it is determined that a consumer's complaint is valid.

(b) Each career counseling service must display a notice in the main office of the service that states the telephone number of the department and indicates that a complaint may be referred to the department.

(c) Each career counseling service must provide information to a consumer on request relating to the credentials of each consultant employed by the service and the number of consultants available in the immediate area through the service.

SECTION 6. ADVERTISING REQUIREMENTS. (a) A career counseling service must be able to prove the truth of every claim made by the service in any form: of literature offered by the service, any medium of advertising, or in an interview. Literature and other advertising must state the length of time that the career counseling service has been in business.

(b) A career counseling service must state its certificate of authority number in any advertising.

SECTION 7. PROHIBITED ACTS; INTERVIEW REQUIREMENTS. (a) An owner of a career counseling service or an agent or employee of the owner may not offer or imply any guarantee, either in advertising or in interviews, that a consumer will obtain a job through the service.

(b) A career counseling service must provide a copy of the service contract to the consumer at the first interview. A career counseling service must hold at least two interviews with a consumer before entering a contract with that consumer.

SECTION 8. CONTRACT REQUIREMENTS. (a) A career counseling service must provide a completed copy of a proposed written contract to a client before the contract is signed. The written contract constitutes the entire agreement between the service and the client. The contract must be signed by the client. The contract must be written in clear language and must specify the terms and time schedule for payment for services, as well as what services are included for the payment.

(b) The contract must clearly state the refund policy of the service.

(c) Each contract must include the following statement printed in at least 10-point boldfaced type:

NOTICE TO CLIENT

(1) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

(2) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THIS CAREER COUNSELING SERVICE, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE SERVICE BY MIDNIGHT NOT LATER THAN THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THE CONTRACT. THE WRITTEN NOTICE MUST BE SENT BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of service's home office)

(3) IF YOUR COMPLAINT IS NOT RESOLVED TO YOUR SATISFACTION BY THE SERVICE, YOU MAY RESOLVE YOUR COMPLAINT THROUGH ARBITRATION BY CONTACTING THE FOLLOWING ASSOCIATION:

(Name, address, and telephone number of the arbitration association)

SECTION 9. CANCELLATION OPTION. (a) A client may cancel a contract before the fourth business day after the date on which the contract is signed by notifying the career counseling service of the cancellation in writing. Written notification is considered given if the notification is mailed by certified mail to the home office of the career counseling service and postmarked not later than midnight of the third business day. The career counseling service shall refund all money paid by the client exercising the right to cancel.

(b) A client may cancel a contract if the client decides not to use the services or determines that the career counseling service is not offering suitable services under the contract. The client is liable for an amount equal to the value of services received under the contract up to the day on which the contract is canceled.

(c) A career counseling service shall make a refund required under this section not later than the 31st day after the date the service receives the notice of cancellation.

SECTION 10. DECEPTIVE TRADE PRACTICE. A violation of this Act is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code. A public or private right or remedy authorized by the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) may be used to enforce this Act.

SECTION 11. ENFORCEMENT; INVESTIGATION; HEARING. (a) The commissioner shall enforce this Act and may investigate any career counseling service as necessary. On request the attorney general shall assist the commissioner.

(b) A person by sworn affidavit may file a complaint alleging a violation of this Act with the commissioner. The commissioner shall investigate the alleged violation on receipt of the complaint. On receipt of a complaint, the commissioner may inspect any records relevant to the complaint and may subpoena those records and any necessary witnesses.

(c) If, as a result of an investigation, the commissioner determines that a violation may have occurred, the commissioner shall hold a hearing in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The hearing must be held not later than the 45th day after the date on which the complaint is filed with the commissioner. The commissioner shall render a decision on the alleged violation not later than the eighth day after the date on which the hearing ends.

(d) If, after the hearing, the commissioner determines that the career counseling service has violated this Act, the commissioner may, as appropriate:

(1) issue a warning; or

(2) suspend or revoke the certificate of authority issued to the service under Section 3 of this Act.

(e) The commissioner or the attorney general may bring an action to enjoin a violation of this Act. Venue for the action lies in the county in which the violation occurred.

SECTION 12. DAMAGES; PENALTY. If, after a hearing conducted under Section 11 of this Act, the commissioner determines that a career counseling service has violated this Act, the commissioner may award the complainant damages in an amount equal to the amount of the fee charged by the service. The commissioner may also impose a penalty on the service equal to twice that amount, which shall be deposited in the State Treasury to the credit of the General Revenue Fund.

SECTION 13. EFFECT OF REVOCATION. If the commissioner revokes a certificate of authority under Section 11 of this Act, the career counseling service whose certificate is revoked and any owner of that service is not eligible to apply for a new certificate until the expiration of three years from the date of the revocation.

SECTION 14. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 15. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 6, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on May 15, 1987, by a viva-voce vote. Passed the House, with amendments, on May 14, 1987, by a non-record vote.

Approved May 28, 1987.

Effective Sept. 1, 1987.

CHAPTER 223

S.B. No. 1216

AN ACT

relating to financial responsibility requirements for applicators of herbicides and pesticides.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 75.014, Agriculture Code, is amended to read as follows:

Sec. 75.014. ~~[CUSTOM APPLIER'S BOND;]~~ **CROP DAMAGE PROTECTION [INSURANCE].** (a) *Except as otherwise provided by this section, each [Each] custom applier shall:*

(1) deposit with the department a surety bond approved by the department in the amount of \$20,000 plus \$2,000 for each piece of spraying equipment licensed for use by the custom applier; or

(2) subscribe for and hold a policy of crop damage insurance approved by the department with coverage in the amount described by Subdivision (1) of this subsection.

(b) *If a custom applier cannot reasonably obtain insurance coverage or a bond as specified by Subsection (a) of this section, the department shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.*

(c) *If the State Board of Insurance determines after giving notice to the department that the crop damage insurance required by Subsection (a)(2) of this section is not generally and reasonably available to custom appliers, then in lieu of the requirements of Subsection (a) of this section, a custom applier may:*

(1) *tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amounts prescribed by Subsection (a) of this section, made payable to the department and issued for the purpose of crop damage protection;*